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7590	01/26/2005			
Wall Marjama & Bilinski Suite 400 101 South Salina Street Syracuse, NY 13202				
			EXAMINER LUM, LEON YUN BON	
			ART UNIT 1641	PAPER NUMBER

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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Paper No.

Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 11/23/04 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121, as amended on June 30, 2003 (see 68 Fed. Reg. 38611, Jun. 30, 2003). In order for the amendment document to be compliant, correction of the following item(s) is required. Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted. 37 CFR 1.121(h).

THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____
- ☐ 3. Amendments to the drawings: _____
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified.
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: see attached

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

If the non-compliant amendment is a **PRELIMINARY AMENDMENT**, applicant is given ONE MONTH from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 132, and this ONE MONTH time limit is not extendable.

If the non-compliant amendment is a reply to a **NON-FINAL OFFICE ACTION** (including a submission for an RCE), and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(c)), applicant is given a TIME PERIOD of ONE MONTH from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).**

If the amendment is a reply to a **FINAL REJECTION**, this form may be an attachment to an Advisory Action. The period for response to a final rejection continues to run from the date set in the final rejection, and is not affected by the non-compliant status of the amendment.

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Attachment to Notice of Non-Compliant Amendment (37 CFR 1.121)

1. Claims 10-34 are listed as amended, with changes including new claim numbers. However, the instant claims as amended have the same claim numbering as originally filed. For example, amended claim 11 recites "The biosensor of Claim 1 wherein the biosensor is a dry analytical element", which is exactly the same text as the original claim 11. Furthermore, amended claim 11 is indicated as amended from original claim 10. However, original claim 10 recites "The biosensor of claim 1 wherein the biosensor is a one-step immunochromatographic test strip" and there are no marks on amended claim 11 to indicate that amended claim 11 has been changed from original claim 10. Although claims 10-34 are marked and indicated as having amended claim numbering, since the amended claim numbering has not changed from the original claim numbering, the amendment is considered to be non-compliant.

In addition, amended claim 10, which is indicated as originally claim 11, includes the phrase "The biosensor of Claim 2 wherein the biosensor is a one-step immunochromatographic test strip". However, original claim 11 and original claim 10, which includes the same language as amended claim 10, are dependent on claim 1. Since there are no marks to indicate the change in dependency of amended claim 10, the amendment is considered to be non-compliant.